IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION(PD)NO.253 OF 2002
AND
C.M.P.NO.8563 OF 2002

K.Ramaraj .. Petitioner

-Vs-

1. S.V.A.R.Su.Sevugan Chettiar.
2. SV.ARV.Veerappan Chettiar.
3. Meenakshi Ammal
4. Dhanavanthiri
5. Nagammal
6. K.Vijayakumar .. Respondents

Civil Revision Petition filed under Section 115 of C.P.C. as stated therein.

For petitioner :Mrs.J.Anandavalli

^For R1 and R2 :Mr.N.C.Ramesh
For R3 to R6 :No appearance.

:O R D E R

The above Civil Revision Petition has been filed against the Fair and Decretal order dated 23.7.2001 made in I.A.No.330 of 19 94 in O.S.No.89 of 1956 by the Court of II Additional Subordinate Judge, Madurai, thereby allowing the application filed by the respondents herein under Section 5 of Limitation Act and Section 151 of C.P.C. praying to condone the delay of 2450 days in filing the application to pass a final decree.
2. Tracing the history of the case, what comes to be known is that the petitioner is the 12th defendant in the suit filed by the Respondents 1 and 2 and their father late OVR.S.V.R.Arunachalam Chettiar for recovery of a sum of Rs.40,000/- due from the defendants on registered hypothecation bond dated 21.5.1947 executed by one Balakrishna Naidu and the suit was pending for 27 years; that finally the defendants submitted to decree and the suit was decreed on 23.4.1983 with costs and interest, further granting two months time for the defendants to pay the decree amount and the defendants did not pay the

same till date; that as per the statute, the time given for filing the final decree application being three years, the respondents 1 and 2 have filed the final decree application only on 4.1.1993 with an application to condone the delay of 2450 days in filing the said application.

3. The learned II Additional Subordinate Judge, Madurai, in consideration of the facts pleaded by the parties and upon hearing the learned counsel for both, framing proper point for consideration would allow the application filed by the petitioners therein on condition to pay a sum of Rs.1000/- to the respondents 4 and 12 therein as cost. Aggrieved by the said fair and decretal order, the petitioner who is the 12th respondent in the impugned order has come forward to file the above Civil Revision Petition on certain grounds put forth as the grounds of revision.

4. Heard the learned counsel for both.

5. During arguments, learned counsel for the petitioner would submit that the preliminary decree was passed on 23.4.1983 thereby granting two months time for the defendants to pay the decree amount of Rs.98 ,700/- i.e. on or before 23.6.1983 and as such the plaintiffs should have filed the final decree application within three years under Article 137 of the Limitation Act i.e. on or before 23.6.1986; that they filed the application in the year 1993 along with the application under Section 5 of the Limitation Act to condone the delay of 2450 days that has been condoned by the lower Court without applying its mind as to whether those reasons are true and valid and without any material to substantiate the reasons for the delay and hence he would pray to set aside the order of the lower court.

6. At this juncture, the learned counsel for the petitioner would cite the following judgments:

1) (1962)2 SCR 762 (Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.)
2) AIR 1971 Calcutta 204 (Bhaktipada Majhi Vs. Sub- Divisional Officer, Kalna and others)
3) AIR 1972 Rajasthan 161 (State of Rajasthan Vs. Ramnath and others)

7. In the first judgment cited above, the Hon'ble Apex Court in a case of delay in filing the appeals before it has held that "in showing sufficient cause for condoning the delay, the appellant has to explain the whole of the delay covered by the period between the last date for filing the appeal and the date on which the appeal was actually filed."

8. In the second judgment cited above, the Hon'ble Judge of the Calcutta High Court citing the Full Bench Judgement of the Madras High Court reported in (1890) ILR 13 Madras 269 (FB) has quoted " the words sufficient cause should receive a liberal construction so as to advance substantial justice where no negligence, nor inaction, nor want of bona fides is imputable to the appellant." and would continue that the said decision received approval of the Supreme Court of India in Dinabandhu Sahu v. Jadumoni Mangaraj, AIR 1954 SC 411 and (AIR 1962 SC 361) and Lonard Gram Panchayat v. Lramgiri, AIR

1968 SC 222.

9. In the third judgment cited above, a Division Bench of the Rajasthan High Court has held that " test is whether it is bona fide cause , a cause for delay which by due care and attention, the party could have avoided cannot be a sufficient cause."

10. On the contrary, learned counsel for the respondents 1 and 2 would submit that they filed the suit for recovery of a sum of Rs.40,000 /- due from the petitioner and other defendants on registered hypothecation bond dated 21.5.1947 executed by one Balakrishna Naidu; that the suit was dragged on by the defendants and finally the defendants submitted to decree on 23.4.1983 and the suit was decreed on the same day with costs and interest granting two months time for the defendants to pay the decree amount, which had not been paid by them till date, which itself will clearly reveal the intention of the respondent herein and the other defendants in evading to pay the suit debt for 27 years; that since the respondents 1 and 2 were travelling in and outside India due to their business commitments, they were of the genuine opinion that there is time for filing final decree petition and hence they have contacted their advocate to file the final decree application; that unfortunately they learnt that their Advocate who conducted the suit having the case bundles lying at his office had passed away sometime in 1986 and his office having been shifted, there was difficulty in tracing the office and the case bundle and hence there was a delay; that the learned Subordinate Judge, has rightly passed an order condoning the delay subject to the condition of paying the cost of a sum of Rs.1000/- to the petitioner herein; that there is no irregularity or infirmity in the order passed by the lower Court and hence he would pray to dismiss the above Civil Revision Petition.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be understood is that the petitioner had submitted to the decree resulting in the suit coming to be decreed on 23.4.1983 with costs and interest, with the grant of two months time for the defendants to pay the decree amount and the defendants not only within the stipulated period of two months but even thereafter since did not pay the amount, the plaintiffs having filed the application under Section 5 of the Limitation Act seeking to condone the delay of 2450 days and the lower Court having considered the reasons assigned therein particularly that the plaintiffs have gone abroad and in the mean time their senior counsel having passed away they were not able to pursue the decree, ultimately resulting in the said delay to occur and this reason having been positively considered, the lower Court ultimately has allowed the application for condonation of delay filed on the part of the plaintiffs/respondents herein, testifying the validity of which the 12th defendant has come forward to file the above Civil Revision Petition seeking to set aside the fair and decretal order dated 23.7.2001 passed by the Court of II Additional Special Judge, Madurai in I.A.No.330 of 1994 in O.S.No.89 of 1956.

12. A careful perusal of the order passed by the lower Court would reveal that the court below has on a careful consideration of the facts and circumstances encircling the whole affair connected to the delay of 2450 days and for, the reasons assigned on the part of the petitioners/plaintiffs and in full consideration of the same on facts and the position of law on the subject would ultimately arrive at its conclusion to allow the application for condoning the delay on a cost of Rs.1000/-.

13. All the judgements cited above would lay emphasis that there must be reasonable cause for condoning the delay right from the date of default till the date of filing of the application under Section 5 of the Limitation Act seeking to condone the delay and therefore, the only question that has to be decided in this case being whether the reasons offered for the condonation of the delay of 2450 days has been properly and reliably explained on the part of the plaintiffs and on facts whether the lower Court has properly appreciated the explanation offered on the part of the petitioners/plaintiffs and on proper grounds has allowed the same and therefore this Court has reason to arrive at the conclusion that it is not only the conclusions arrived at by the lower Court in allowing the application for condonation of delay, but also the manner in which the said application has been allowed stand beyond question and hence, the interference of this Court sought to be made into the well considered and merited order passed by the lower Court is neither necessary, nor warranted in the circumstance of the case and hence the following order:

In result,
(i) there is no merit in the above Civil Revision Petition and the same is dismissed;
(ii) the order dated 23.7.2001 made in I.A.No.330 of 1994 in O.S.No.89 of 1956 by the Court of II Additional Subordinate Judge, Madurai thereby allowing the application filed by the respondents herein under Section 5 of the Limitation Act on costs is confirmed;
(iii) however, in the circumstances of the case, there will be no order as to costs;
(iv) consequently, C.M.P.No.8563 of 2002 is also dismissed.

Index:Yes
Internet:Yes

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